

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR08-794

BRANDON WILLIAMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered FEBRUARY 25, 2009

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT,
[NO. CR2006-426]

HONORABLE DAVID BURNETT,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Brandon Williams appeals from the revocation of his suspended sentence, contending that the trial court lacked jurisdiction to revoke because his period of suspension had not begun at the time of the revocation. We hold that the trial court had jurisdiction to revoke Williams's sentence, and we affirm its order.

On April 25, 2006, Williams pleaded guilty to possession of a controlled substance with intent to deliver, for which he was sentenced to seven years' imprisonment, and to sale of a controlled substance, for which he was given a ten-year suspended imposition of sentence to be served "consecutive to ADC." Williams was paroled on October 9, 2006. While on parole, Williams was arrested on new charges. The State filed a petition to revoke his suspended imposition of sentence on June 1, 2007. The trial court entered an order revoking his suspended sentence on March 12, 2008, and sentenced him to ten years' imprisonment

on the conviction for sale of a controlled substance.

Williams's sole point on appeal is that the trial court lacked jurisdiction to revoke his suspended sentence. Specifically, he argues that his suspended sentence had not yet begun when the court revoked it and would not begin until after his period of parole had ended. To support his argument, Williams relies upon the following language in Ark. Code Ann. § 5-4-307(c) (Repl. 2006): "If a court sentences a defendant to a term of imprisonment and suspends imposition of sentence as to an additional term of imprisonment, the period of the suspension commences to run on the day the defendant is lawfully set at liberty from the imprisonment." He then cites Ark. Code Ann. § 16-93-701 (Repl. 2006), which states that, while on parole, the prisoner "shall remain in the legal custody of the institution from which he was released." Williams claims that, because he was in the "legal custody" of the Arkansas Department of Correction (ADC) while on parole, he was not "lawfully set at liberty from the imprisonment." Williams is wrong.

Williams's suspended sentence began on the day he was "lawfully set at liberty from the imprisonment." Ark. Code Ann. § 5-4-307(c). Parole is defined by statute as "the release of the prisoner into the community by the Parole Board prior to the expiration of his or her term, subject to conditions imposed by the board and to the supervision of the Department of Community Correction." Ark. Code Ann. § 16-93-101(1) (Repl. 2006). Thus, by definition, during parole, a prisoner has been lawfully released into the community. Being in the "legal custody of" and subject to "the supervision of the Department of Community Correction" is not imprisonment. Parole is a lawful release from prison and constitutes being

“lawfully set at liberty from the imprisonment” under Ark. Code Ann. § 5-4-307(c).

Moreover, we said in *Vann v. State*, 16 Ark. App. 199, 201, 698 S.W.2d 814, 815 (1985), that the appellant’s suspended sentence in that case commenced on the day he was paroled from prison. *See also Chadwell v. State*, 80 Ark. App. 133, 91 S.W.3d 530 (2002) (citing *Vann* for its holding that a suspended sentence begins to run when the defendant is released on parole). Here, Williams’s period of suspension began on the day he was released on parole, October 9, 2006, even though he remained under the supervision of the ADC. Accordingly, the trial court had jurisdiction to revoke Williams’s suspended sentence on March 12, 2008.

Affirmed.

PITTMAN and BAKER, JJ., agree.